

Three worlds of compliance or four? The EU15 compared to new member states

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Three Worlds of Compliance or Four?

The EU15 Compared to New Member
States

Gerda Falkner and Oliver Treib

112

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Member States

Gerda Falkner and Oliver Treib

2007

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Founded in 1963 by two prominent Austrians living in exile – the sociologist Paul F. Lazarsfeld and the economist Oskar Morgenstern – with the financial support from the Ford Foundation, the Austrian Federal Ministry of Education, and the City of Vienna, the Institute for Advanced Studies (IHS) is the first institution for postgraduate education and research in economics and the social sciences in Austria. The **Political Science Series** presents research done at the Department of Political Science and aims to share “work in progress” before formal publication. It includes papers by the Department’s teaching and research staff, visiting professors, graduate students, visiting fellows, and invited participants in seminars, workshops, and conferences. As usual, authors bear full responsibility for the content of their contributions.

Das Institut für Höhere Studien (IHS) wurde im Jahr 1963 von zwei prominenten Exilösterreichern – dem Soziologen Paul F. Lazarsfeld und dem Ökonomen Oskar Morgenstern – mit Hilfe der Ford-Stiftung, des Österreichischen Bundesministeriums für Unterricht und der Stadt Wien gegründet und ist somit die erste nachuniversitäre Lehr- und Forschungsstätte für die Sozial- und Wirtschaftswissenschaften in Österreich. Die **Reihe Politikwissenschaft** bietet Einblick in die Forschungsarbeit der Abteilung für Politikwissenschaft und verfolgt das Ziel, abteilungsinterne Diskussionsbeiträge einer breiteren fachinternen Öffentlichkeit zugänglich zu machen. Die inhaltliche Verantwortung für die veröffentlichten Beiträge liegt bei den Autoren und Autorinnen. Gastbeiträge werden als solche gekennzeichnet.

Abstract

Starting from the findings of an earlier compliance study covering the fifteen 'old' member states of the European Union, which identified three 'worlds of compliance', this paper seeks to establish whether or not the new member states from Central and Eastern Europe (CEE) represent a separate world of compliance. We present empirical findings from a research project on the implementation of three EU Directives from the field of working time and equal treatment in four CEE countries. The evidence suggests that the new member states display implementation styles that are similar to a few countries in the EU15. The expectation that the new member states might behave according to their own specific logic, such as significantly decreasing their compliance efforts after accession in order to take 'revenge' for the strong pressure of conditionality, is not supported by our case studies. Instead, all four new member states appear to fall within a group that could be dubbed the 'world of dead letters'. It is crucial to highlight, however, that this specific 'world of compliance', characterised by politicised transposition processes and systematic application and enforcement problems, also includes two countries from the EU15.

Zusammenfassung

Ausgehend von einer früheren Implementationsstudie über die 15 'alten' Mitgliedstaaten der Europäischen Union, deren Hauptergebnis eine Typologie von drei 'Welten der Rechtsbefolgung' war, geht dieser Beitrag der Frage nach, ob die neuen Mitgliedstaaten aus Mittel- und Osteuropa (MOE) eine zusätzliche Ländergruppierung mit einem eigenen Implementationsstil bilden. Wir präsentieren Ergebnisse eines Forschungsprojekts über die Implementation von drei EU-Richtlinien aus den Bereichen Arbeitszeit und Gleichbehandlung in vier MOE-Ländern. Unseren Befunden zufolge ähneln die beobachteten Implementationsmuster der neuen Mitgliedstaaten denen einer kleinen Gruppe von Staaten innerhalb der EU15. Keine Unterstützung liefern unsere empirischen Ergebnisse dagegen für die Erwartung, die neuen Mitgliedstaaten könnten einer eigenen Logik bei der Befolgung von EU-Recht folgen, etwa in Gestalt eines deutlich laxeren Umgangs mit europäischen Rechtsvorschriften nach dem Beitritt als 'Vergeltung' für den hohen Vorbeitrittsdruck. Insgesamt lassen sich alle vier untersuchten Länder in eine Gruppe einordnen, die wir als 'Welt des toten Rechts' bezeichnen. Diese Welt, die durch politisierte Umsetzungsprozesse und systematische Probleme bei der praktischen Anwendung und beim Vollzug gekennzeichnet ist, umfasst jedoch nicht nur MOE-Länder, sondern auch zwei 'alte' Mitgliedstaaten.

Keywords

EU, implementation, Central and Eastern Europe, worlds of compliance

Schlagworte

EU, Implementation, Mittel- und Osteuropa, Welten der Rechtsbefolgung

General note on content

The opinions expressed in this paper are those of the author and not necessarily those of the IHS
Department of Political Science

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Introduction¹

Non-respect of jointly adopted rules and policies has already been a significant problem in the fifteen 'old' member states of the European Union (EU). In May 2004, ten additional member states joined the EU. With Malta, Cyprus, and eight countries from Central and Eastern Europe (CEECs) being part of the club, however, the issue of compliance with EU legislation has become even more pressing. The CEECs are transition states not only regarding their economies but also their political and legal systems. Most of them still have a long way to go to achieve fully-fledged democratic systems with stable institutions and societies that respect the rule of law regularly in everyday life. At the same time, it does not make sense for the EU to adopt intricate rules for a unified market, if they remain dead letter in a large part of the Union. Being well aware of potential problems in the applicant states, the European Commission already made compliance with EU policies a priority during the period preceding the 2004 enlargement (see official statements such as, for example, the Governance White Paper: CEC, 2001).

The accession of Bulgaria and Romania, two countries with even graver problems in the field of court systems and the rule of law, yet again increased the exigency of compliance with EU rules. Despite much preparatory work in both countries, the European Commission still needed to express great concerns in its 2006 monitoring reports: 'Bulgaria needs to demonstrate clear evidence of results in the fight against corruption, in terms of investigations and judicial proceedings. It also needs to further reform the judiciary, in particular to reinforce its transparency, efficiency and impartiality' (CEC, 2006d, p. 1). The Commission furthermore pressed for more efficient and systematic implementation of laws for the fight against fraud and corruption. Romania was also said to need to 'demonstrate further results in the fight against corruption. It also needs to consolidate the implementation of the ongoing justice reform and further enhance the transparency, efficiency and impartiality of the judiciary' (ibid., p. 3). Alarming assessments of similar nature may be found in the Commission's progress reports on Croatia and Macedonia – the two candidate countries that currently appear to be furthest advanced in their rapprochement with the EU (CEC, 2006a, pp. 7-8; 2006b, pp. 7-11). Problems with the domestic fulfilment of EU legislation will thus remain a hot topic in the years to come.

¹ This paper is part of a larger research project on the transposition and application of EU Directives in new member states funded by the Austrian Ministry of Science under the TRAFO programme for transdisciplinary research (for details see <http://www.ihs.ac.at/index.php3?id=1144>). Thanks to our collaborators Elisabeth Holzleithner, Emmanuelle Causse, Petra Furtlehner, Marianne Schulze and Clemens Wiedermann for their important input and to the Robert Schuman Centre for Advanced Studies at the European University Institute in Florence for hosting Gerda Falkner while she was writing her part of this paper. An earlier version was presented at the ECPR's 3rd Pan-European Conference on EU Politics, Istanbul, 21-23 September 2006. We would like to thank the panellists and our discussant Andrea Lenschow as well as Sylvia Kritzing and two anonymous referees for their helpful comments.

The major approach to date in the field of enlargement studies regarding CEECs' adaptation performance has been the 'external incentives model'. It highlights the fact that where rule adoption was successful, it had been driven mainly by the membership 'carrot' promised to the candidates by the EU as an external actor. Accordingly, relevant scholars expected that 'the absence of these incentives should significantly slow down or even halt the implementation process' (Schimmelfennig and Sedelmeier, 2005a, p. 226; see also Schimmelfennig, Engert and Heiko, 2005, p. 29; 2005b, p. 28; Linden, 2002, p. 371). The finding that conditionality as an external incentive was the key mechanism that led to the adoption of EU rules by the candidates makes the question of post-accession compliance even more salient (e.g. Schimmelfennig and Sedelmeier, 2004, p. 677; 2005a, p. 226; Dimitrova and Steunenberg, 2004, p. 180). However, it has only been possible to study the CEECs' behaviour after accession in the few years since their joining the EU. Earlier work on pre-accession compliance with EU law clearly cannot be generalised beyond the 'age of carrots and sticks' when membership was still an important incentive to comply with anything the EU might demand. The 'logic of control' which prevailed during the negotiation phase has now come to an end, and different dynamics are to be expected (Maniokas, 2004; Sedelmeier, 2006).

Now that accession has been completed, therefore, it is high time to study how the new CEE member states actually perform in implementing EU legislation. To answer this question, this article presents findings from a comparative project on the transposition, enforcement and application of EU legislation in the Czech Republic, Hungary, Slovakia and Slovenia, carried out in 2005 and 2006. We specifically look at EU law in the fields of working time and of equal treatment in the workplace. Most of the EU provisions we study had to be implemented before accession. Some of them, however, were due to be fulfilled by October 2005, that is, after the CEECs had joined the EU. In addition, we screened the relevant reform activities both before and after accession. Therefore, we are in a position to address not only implementation efforts in the pre-accession phase but also post-accession compliance, although more cases and a longer period of observation would certainly be needed to generate a definite assessment.

Our qualitative case studies rely on expert interviews with administrators; on focus group discussions involving those directly concerned with the relevant laws, or their representatives; as well as on the scarce literature available in the field. On the conceptual level, this study builds on an earlier compliance study covering the EU15, which identified country clusters, each with its own typical implementation mode. These three 'worlds of compliance' (Falkner, Treib, Hartlapp and Leiber, 2005, chapter 15) will be summarised in the next section. Section 2 then outlines some reasons to expect that the CEECs might actually form a specific group within the EU27. Section 3 presents empirical findings on the four countries studied from the field of working time and equal treatment. The conclusions finally discuss similarities and differences between the 'old' and 'new' member states of the EU. As

a result of this, we will present ideas for a conceptual design of not only three but four worlds of compliance in the EU27.

1. Three Worlds of Compliance in the EU15

Our earlier study analysed the national transposition, enforcement, and application of six EU labour law Directives in the fifteen 'old' member states. The results of our qualitative study of 90 implementation cases indicated that there is no single overriding factor which determines the compliance performance and could thus serve as a safe anchor for predicting the success or failure of future implementation cases in all of our fifteen countries (Falkner, Treib, Hartlapp and Leiber, 2005, p. 317).² Even the two theoretically best-established hypotheses (on misfit³ and veto players⁴) had at best very weak explanatory power. A closer look at our qualitative case studies revealed that even their basic rationale did not hold in some clusters of countries (Falkner, Hartlapp and Treib, 2007). As a solution, we offered a typology of three worlds of compliance within the EU15, each of which is characterised by an ideal-typical implementation style.

In the *world of law observance*, the compliance goal typically overrides domestic concerns. Even if there are conflicting national policy styles, interests or ideologies, transposition of EU Directives is usually both in time and correct. This is supported by a 'compliance culture' in the sense of an issue-specific 'shared interpretive scheme' (Douglas, 2001, p. 3149), a 'set of cognitive rules and recipes' (Berger and Luckmann 1967, quoted in Swidler, 2001, p. 3064). Application and enforcement of the national implementation laws is also characteristically successful, as the transposition laws tend to be well considered and well adapted to the specific circumstances and enforcement agencies as well as court systems are generally well-organised and equipped with sufficient resources to fulfil their tasks. Non-compliance, by contrast, typically occurs only rarely and not without fundamental domestic traditions or basic regulatory philosophies being at stake. In addition, instances of non-compliance tend to be remedied rather quickly. The three Nordic member states (Denmark, Finland and Sweden) belong to this country cluster.

2 The research team conducted more than 180 expert interviews with experts from the ministries, interest groups and labour inspections in the fifteen member states. They covered six labour law Directives from the 1990s, concerning written information on contractual employment conditions (91/533/EEC); parental leave (96/34/EC); working time (93/104/EC); and the protection of pregnant (92/85/EEC), young (94/33/EC) and part-time workers (97/81/EC). Special acknowledgements go to Miriam Hartlapp and Simone Leiber, our two partners on the project and co-authors of our joint book, whose research greatly contributed to the project findings.

3 This approach rests on historical and/or sociological institutionalist reasoning which focuses on the 'stickiness' of established policies and administrative routines (see e.g. March and Olsen, 1989; DiMaggio and Powell, 1991; Thelen and Steinmo, 1992; Thelen, 1999; Pierson, 2000). If European rules do not match existing traditions, implementation is expected to be controversial and/or disrespected during the implementation phase (e.g. Duina, 1997, 1999; Duina and Blithe, 1999; Knill and Lenschow, 1998, 2000).

4 According to George Tsebelis (1995), the reform capacity of a political system decreases as the number of decisive actors increases. It follows that EU countries with higher numbers of veto players should have more problems with enacting transposition legislation in order to incorporate EU standards than systems with low numbers of veto players (see e.g. Haverland, 2000).

Obedying EU rules is at best one goal among many in the *world of domestic politics*. Domestic concerns frequently prevail if there is a conflict of interests, and each single act of transposing an EU Directive tends to happen on the basis of a fresh cost–benefit analysis. Transposition is likely to be timely and correct where no domestic concerns dominate over the fragile aspiration to comply. In cases of a manifest clash between EU requirements and domestic interest politics, non-compliance is the likely outcome. While in the countries belonging to the world of law observance breaking EU law would not be a socially acceptable state of affairs, it is much less of a problem in one of the countries in this second category. At times, their politicians or major interest groups even openly call for disobedience with European duties – an appeal that is not met with much serious condemnation in these countries. Since administrations and judiciaries generally work effectively, application and enforcement of transposition laws are not a major problem in this world – the main obstacle to compliance is political resistance at the transposition stage. Austria, Belgium, Germany, the Netherlands, Spain and the UK belong to this type.

In the countries forming the *world of transposition neglect*,⁵ compliance with EU law is not a goal in itself. Those domestic actors who call for more obedience thus have even less of a sound cultural basis for doing so than in the world of domestic politics. At least as long as there is no powerful action by supranational actors, transposition obligations are often not recognised at all in these ‘neglecting’ countries. A posture of ‘national arrogance’ (in the sense that indigenous standards are typically expected to be superior) may support this, as may administrative inefficiency. In these cases, the typical reaction to an EU-related implementation duty is inactivity. After an intervention by the European Commission, the transposition process may finally be initiated and may even proceed rather swiftly. The result, however, is often correct only at the surface. Where literal translation of EU Directives takes place at the expense of careful adaptation to domestic conditions, for example, shortcomings in enforcement and application are a frequent phenomenon. Potential deficiencies of this type, however, do not belong to the defining characteristics of the world of transposition neglect. Instead, negligence at the transposition stage is the crucial factor in this cluster of countries, which includes France, Greece, Luxembourg and Portugal.⁶

The typology can be used as a filter that decides which explanatory factors are relevant for different countries and what the direction of their influence is. In this sense, crucial theoretical propositions in EU implementation research, including the misfit and the veto player approaches, are only ‘sometimes-true theories’ (Falkner, Hartlapp and Treib, 2007).

5 Building on the results of our new study on compliance in Central and Eastern Europe, we now suggest to slightly reformulate the label of this world (previously: ‘world of neglect’).

6 The attentive reader will have noticed that two of the ‘old’ member states, Ireland and Italy, have not been assigned to any of the above country clusters. In our original work, we subsumed these two countries under the overall heading of what we then called the ‘world of neglect’ (Falkner, Treib, Hartlapp and Leiber, 2005, pp. 339-40). However, against the background of our new research on Central and Eastern Europe, the results of which will be summarised below, we decided to revise this assignment and include both countries into a fourth cluster. See the Conclusions for a detailed discussion of the revised scheme.

The point is that implementation processes tend to depend on different factors within each of the various worlds. The compliance culture in the field can explain many cases in the world of law observance. In the world of domestic politics, transposition is decisively influenced by the extent to which the EU's rules match the political preferences of political parties and major interest groups, while application and enforcement are generally effective. In the world of transposition neglect, the decisive factor is administrative inertia at the transposition stage, caused by countervailing bureaucratic interests or malfunctioning routines. Given the huge problems in transposition, practical implementation is of secondary importance.

Since the EU has recently grown to include ten more member states, most importantly eight states from the CEECs, it is now time to study the relationship between typical implementation patterns in the EU15, on the one hand, and those of the new members, on the other. The following section will outline some typical features of the transition states in order to provide some reasoned expectations for the ensuing discussion of the main question of this paper: do the new CEE member states form a distinct world of compliance within the enlarged European Union, or can they be subsumed under any of the three worlds prevalent in the fifteen 'old' member states?

2. Specific Characteristics of the New CEE Member States

A number of aspects suggest that the new member states of Central and Eastern Europe might have even more problems with applying and enforcing the law than there already are for some countries in the old EU15. One relevant feature in this regard could be *literal transposition* of Directives, which has been described as a frequent phenomenon (see e.g. Schimmelfennig and Sedelmeier, 2007; Sissenich, 2002, p. 299); this implies a lack of adaptation to specific circumstances in each country as well as an absence of broad consultation of affected groups during the preparation of the laws; both are factors traditionally believed to impinge on good overall compliance (see the political science theories on policy implementation as reviewed in Pölzl and Treib, 2006; Treib, 2006). Another well-known characteristic of countries is the prevailing *weakness of civil society* (Schimmelfennig, Engert and Knobel, 2003, p. 498; Sissenich, 2002). This suggests that less cases of non-compliance will be detected and pursued by collective actors (such as trade unions) which could, in principle, more easily and effectively fight for social rights than individuals (on the importance of civil society as a factor in differential Europeanisation, see also the work by Vivien Schmidt, e.g. 2002). These factors can be interpreted to suggest a

rather systematic pattern⁷ for the CEECs, with significantly worse application and enforcement of EU law than in many of the ‘old’ EU member states.

Such considerations tie in with a number of earlier studies indicating for the pre-membership phase that ‘many EU rules have been only formally transposed into national legislation but are not fully or reliably implemented’ (Schimmelfennig and Sedelmeier, 2005a, p. 226; see also Sissenich, 2005; Leiber, 2005, p. 25). Klaus Goetz questions not only the capacity on the part of the new member states to ensure compliance but, at least in some instances, also their willingness to do so (Goetz, 2005, p. 276). Be that as it may, application failures can in the long run be crucial for the overall success in implementing EU law, and neglectful enforcement of a Directive’s standards may counterbalance dutiful performance by a member state during the transposition stage.

Therefore, it seems high time to look more closely at the practice of compliance with EU law in CEE member states. In doing so, we will pay attention to the following questions:

- Do the new CEE member states fit one of the patterns captured by the three worlds of compliance?
- If so, do they all fall into one of the worlds, or are they distributed across these categories?
- If not, do we need a fourth ‘world of compliance’? One possibility could be a kind of ‘world of revenge’ where after the achievement of membership, the former candidates show signs of late protest against the way in which the pre-accession phase was handled by the EU (for hints in this direction, see e.g. Goetz, 2005, p. 273; Ágh, 2003). This could be a form of resistance against adaptation, now that the threat of conditionality is gone and nothing quite serious can happen in cases of non-compliance – except for the quite long-term perspective of having significant fines imposed by the European Court of Justice.

To answer these questions, the following sections will summarise the empirical results of our project in the fields of working time regulation and equal treatment in the workplace.

⁷ In the words of Klaus Goetz, this might then be another example of ‘clustered Europeanization’ (Goetz, 2006).

3. The Implementation of EU Legislation on Working Time and Equal Treatment in Slovenia, Slovakia, Hungary and the Czech Republic

The three Directives selected for our study are among the most important pieces of EU legislation in the field of social policy. All of them gave rise to major implementation problems in the 'old' member states (Prondzynski, 1987, 1988; CEC, 2004; Falkner, Treib, Hartlapp and Leiber, 2005, chapter 13). Against this background, how did the new member states from Central and Eastern Europe comply with these three Directives?

Transposition Patterns: Domestic Politics Dominates the Scene

The *Working Time Directive* (2003/88/EC)⁸ required surprisingly few legal adaptations in the four selected CEE countries. All of them could start from older provisions on maximum weekly working hours, rest periods, breaks and annual leave. Nevertheless, the existing legislation had to be updated and specified in order to fulfil the detailed requirements of the EU's working time regime. For example, Slovenia had to reduce maximum statutory weekly working hours, including overtime, from 50 to 48 hours, increase annual leave entitlements by two days and introduce specific night work regulations. The other three countries were faced with similar gradual reforms of their existing legal frameworks governing working time.

Although the degree of legal misfit was not particularly high, transposition of the Working Time Directive gave rise to fierce political controversies in all four countries. The main bone of contention was the flexibilisation of existing rules and the extent to which the exemption and derogation options offered by the Directive should be used.

In Slovakia, the transposition process was dominated by the centre-right Dzurinda government's deregulation plans. As a consequence, the government made full use of the flexibility offered by the Directive, incorporating a minimalist version of the Directive into domestic law. In particular, individual employers were allowed to negotiate more flexible working time rules with their workers without union participation. The weak Slovak trade unions were not able to prevent this decentral system of company-level agreements, which was clearly modelled on the British scheme. The same was true for the Hungarian unions, which were not able to stop the centre-right government under prime minister Viktor Orbán from using most of the derogations and flexibility offered by the Directive, even if, to a certain extent, most of the provisions adopted previously existed. In Slovenia, the transposition

⁸ In our recent project, we studied the consolidated version of the original 1993 Directive, which also comprises the standards of a number of subsequent Directives enacted to extend the working time regime to sectors and professions that were originally excluded from the Directive's scope. This is because the applicant countries had to comply not only with the 1993 Directive but with the whole set of legal provisions in the field of working time regulation.

process was also marked by debates about increasing the flexibility of the existing working time regime. There, however, the government and the social partners agreed on a tripartite compromise that safeguarded a number of protective provisions that employers had previously called into question. In the Czech Republic, finally, the unions sided with the centre-left Zeman government and thus succeeded in rejecting the employers' calls for more flexibility. In the end, therefore, transposition of the Working Time Directive in the Czech Republic turned out to be relatively favourable to employees.

Despite the considerable controversies surrounding the transposition, all four countries managed to transpose the Working Time Directive on time and essentially correctly. The most important legal shortcomings refer to the ECJ's case law on on-call duties,⁹ which most of our four countries have so far not complied with. Due to the massive costs of rearranging the shift systems in hospitals, emergency medical services and similar workplaces, however, many 'old' member states have also failed to give effect to this case law so far. Moreover, a process of revising the Directive is currently in process at the European level. These revisions also include a change to the definition of working time to the effect that on-call duties would no longer be treated as working time. The transposition problems associated with the ECJ rulings would thus cease to exist.¹⁰

The two equality Directives, the *Equal Treatment Directive* (76/207/EEC, amended by 2002/73/EC) and the *Employment Framework Directive* (2000/78/EC), created much more adaptation pressure in the four countries. The goal of the two Directives is to ban work-related discriminations on grounds of gender, age, religion or belief, sexual orientation and disability. Although all four countries had rather wide-ranging constitutional provisions on anti-discrimination, these provisions were generally not applicable to private employment relationships and needed much more specification to fulfil the detailed requirements of the Directives. This was true for the Czech Republic and Slovenia. In Slovakia, it was especially homosexuals and other sexual minorities who lacked protection from work-related discrimination, while Hungary was only required to implement a number of gradual improvements.

Despite these (at least partly) significant reform requirements, three of our four countries managed to fulfil the main provisions of the Directive largely on time. The transposition laws of some countries even go far beyond the minimum standards prescribed by the Directives. The anti-discrimination acts in Hungary and Slovenia, both of which were enacted by centre-left governments, thus covered many more grounds of discrimination than laid down in European legislation, and they extended the scope of the whole non-discrimination principle beyond the area of employment, although this would have been required for some aspects

⁹ See the Court's Judgments in the cases C-303/98 (SIMAP) and C-151/02 (Jäger).

¹⁰ For the purpose of our project, we thus do not treat these problems as violations of the Directive as such, but as cases of non-compliance with ECJ rulings.

only. Regardless of this considerable over-implementation, the transposition processes in Hungary and Slovenia could be completed relatively swiftly, primarily due to the determination of the two centre-left governments to push through these reforms, backed up by trade unions and civil society organisations. This is not true for the Czech Republic and Slovakia, where especially Christian-democratic parties opposed the creation of far-reaching anti-discrimination legislation.

In the Czech Republic, it was primarily the Christian-democratic KDU-ČSL, part of the governing coalition with the Social Democrats (ČSSD) and the Liberals (US-DEU) since 2002, that dragged its heels on the adoption of a comprehensive anti-discrimination act. After adoption of the bill had failed repeatedly, the Chamber of Deputies approved the draft in early 2006. However, the conservative-dominated Senate rejected the draft. Therefore, it was sent back to the Chamber of Deputies for a second voting. However, the governing coalition failed to organise an absolute majority, which would have been required for this second vote to be successful. Therefore the draft finally failed. Instead, the legal situation continues to be marked by the results of a first step of transposition: a complex arrangement of individual legal provisions scattered over a multitude of laws. These laws are marked by several shortcomings if compared to the European standards. Most importantly, the Czech Republic has so far failed to create a proper Equal Treatment Body, which is meant to provide assistance to victims, conduct its own surveys and publish independent reports about equality issues. Yet, this case also shows that transposition efforts did not come to a halt after the Czech Republic had joined the EU and after the instrument of conditionality had thus ceased to be at the disposal of the Commission. The efforts to create a comprehensive anti-discrimination act, although they failed in the end, clearly demonstrate that the Czech government continued its transposition efforts after May 2004.

In Slovakia, members of parliament and ministers from the Christian democratic KDH openly opposed the creation of legal provisions to guarantee the equal treatment of homosexuals. This resistance could only be overcome after members of the opposition parties agreed to vote with the other coalition partners in order to get the transposition bill adopted without the votes of the Christian democrats.

In sum, the transposition record of the four new member states with regard to the three Directives in our sample is considerably better than that of the EU15. Although some of the provisions in our sample had to be complied with after accession only, most of them were subject to the Commission's pre-accession pressure. Conditionality may thus serve as one important explanation for the relatively good transposition performance of our countries. At the same time, this does not imply that implementation efforts significantly decreased once accession had been accomplished. As the above overview clearly demonstrates, moreover, the transposition processes were often marked by political battles between different political parties and interest groups. These battles clearly left their stamp on the substance of the resulting transposition legislation, with left-wing governments tending to opt for more

employee-friendly, over-implemented versions of the Directives and centre-right governments preferring more minimalist solutions. All of these characteristics are very similar to what we identified as the typical transposition processes in the world of domestic politics (Falkner, Treib, Hartlapp and Leiber, 2005, chapter 15).

Application and Enforcement: Dead Letters Galore

The picture changes significantly if we look at the enforcement and application stage. The Czech Republic, Hungary, Slovakia and Slovenia are all plagued by a multitude of problems that have so far largely prevented the legislation from being realised in practice. The huge gap between the law on the books and the practice on the ground also suggests that the observation of relatively low degrees of adaptation pressure in legal terms needs to be qualified considerably. As the poor enforcement and application performance of the four countries obviously also pertained to the pre-existing legislation, the 'real' changes that the Directives called for were much more severe than suggested by an exclusive focus on the legal sphere.¹¹

In the field of *working time*, many employees voluntarily work longer hours than allowed by the law because they need the extra pay to earn a living. This is a phenomenon that has already been observed in other low-wage countries such as, e.g., Ireland (Falkner, Treib, Hartlapp and Leiber, 2005, pp. 114-15). Among the sectors where working excessive overtime is particularly widespread is health-care, where shift systems and on-call duties result in working hours that by far exceed the limits laid down in the European Directive. Major problems with overtime working were also reported from building, transport, agriculture, tourism and seasonal work, commerce, the food industry and catering. With regard to *equality in the workplace*, discriminatory practices, especially to the detriment of women and homosexuals, are still a widespread phenomenon in the four countries. There is a tendency among employers not to hire younger women because they might become pregnant. Additionally, women are often discriminated with regard to promotion, which is best witnessed by the low share of women in higher positions. Moreover, many women are confronted with sexual harassment by their male colleagues or superiors. Homosexuals often do not disclose their sexual orientation vis-à-vis their employers or colleagues for fear of being discriminated. The way in which high-ranking Christian democratic politicians in Slovakia openly agitated against the employment of homosexuals in schools shows that such fears are not ill-founded.

The bulk of these application problems may be explained by shortcomings in the countries' enforcement systems. The most important of these are the following:

¹¹The combination of legal reform requirements and their practical relevance is an integral part of our operationalisation of the misfit concept (Falkner, Treib, Hartlapp and Leiber, 2005, pp. 27-32).

(1) A lack of individual litigation from below: The first major obstacle for employment legislation to become reality in the workplaces of the four countries is the lack of active litigation by employees. This has a number of reasons. As the introduction of the new laws was not accompanied by effective information campaigns either by the governments, by lower-level public authorities or by civil-society actors, employees often do not know what their rights are. Moreover, many employees do not dare to file complaints against their employer because they are afraid of losing their jobs in return. Although the equality Directives explicitly rule out such retaliatory action by employers, our information on everyday practice in the four CEE countries suggests that this provision has not been effective in overcoming litigation reluctance. The problem seems to be particularly severe in post-socialist countries such as our four CEECs, where many employees were used to life-long job security. As a result of the socialist heritage, finally, individual court actions have been introduced as an alien element of enforcement after 1989. Therefore, there is *no litigation culture among the citizens* of the four countries.

(2) A lack of support by civil society actors: Trade unions and other civil society actors are too weak to effectively support employees in pursuing their rights. Trade unions, which are distrusted by many citizens as they are being associated with the former socialist regimes, struggle with steadily declining membership rates. In 2004, these had dropped to 17 per cent of all employees in Hungary, 22 per cent in the Czech Republic (2003 figure) and 31 per cent in Slovakia (CEC, 2006c, p. 25). Slovenia, in contrast, stands out with a relatively high unionisation rate of 44 per cent (CEC, 2006c, p. 25). Even there, however, less than half of all employees are organised in a trade union. Compared to countries like Denmark or Sweden, with unionisation rates of around 80 per cent (CEC, 2006c, p. 25), this still seems rather modest. Other civil society organisations have only developed rather recently and struggle with a steady shortage of resources. Employees who may want to invoke their rights have thus too little support from societal organisations. Moreover, procedures for involving societal organisations in judicial proceedings have remained at a rather minimalist level in most countries. In general, interest associations may only support individual employees in legal proceedings relating to discrimination, as called for by the equality Directives. It is only in Hungary that societal groups may initiate, under certain conditions, discrimination-related proceedings themselves, without an individual being involved. In other areas and in the other three countries, however, the possibility of *actio-popularis* claims as a replacement for individual litigation does not exist.

(3) Equal Treatment Bodies – promising babies with teething problems: Another way of supporting individuals in pursuing their rights is the creation of independent public bodies that offer advice and assistance to individuals who feel that their rights have been violated. In those countries that have so far succeeded in creating such bodies, they certainly represent a valuable instrument for giving effect to the principle of equality in practice. However, all of the existing bodies are plagued by a lack of visibility, institutional standing and resources so that their actual performance has so far lagged behind their formal competences. Due to the

political problems surrounding the transposition of the equality Directives, finally, the Czech Republic has not yet managed to create a proper Equal Treatment Body.

(4) Shortcomings in the organisation of the judiciary: Lacking resources in the court systems make for lengthy court proceedings in some of our countries. According to our information, the usual period until a first-instance ruling is achieved in the field of labour law ranges from about one year in Slovenia, fourteen months in Slovakia, between one and two years in Hungary, and up to three years in the Czech Republic. While one year seems to be a relatively common length of proceedings in Western Europe as well, a duration of two or three years definitely has a negative effect on people's willingness to go to court in the first place. Especially in the Czech Republic, moreover, there is a lack of attention for rulings by other courts, resulting in a situation where similar cases are often decided differently by different courts.

(5) A lack of skilled inspectors and determination strains the work of labour inspectorates: The problem in our four countries seems to be less the absolute number of inspectors in charge of monitoring compliance with labour law provisions or a lack of competences to act directly against cases of non-compliance. Instead, there are three other reasons to explain why many observers criticise the labour inspectorates for being ineffective in ensuring compliance with working time and equal treatment law. First, the labour inspectorates in the four countries focus heavily on issues of occupational safety and health and on combating undeclared work. As most resources are deployed on these topics, not much is left for monitoring working time or equality issues. Second, inspectors often have a technical background and therefore lack expertise in the fields of our Directives. Third, there were reports from employee representatives, especially in Slovakia and Slovenia, accusing the labour inspectorates of having too close relations to employers and deliberately sparing companies that are in an economically tense situation. Despite these problems, there have been recent efforts to improve the organisational structures and the capacities of the labour inspectorates in Hungary and the Czech Republic. In Slovakia, by contrast, recent reforms by the centre-right government rather yielded in the opposite direction, involving a reduction of, rather than an increase in, the number of inspectors.

As a result of these cumulated problems, many of the legal provisions that entered the statute books in order to fulfil the EU's social policy *acquis* have so far largely remained dead letters. This is not to deny that there are differences in degree between the four countries and that, over the past decade, they all made efforts to improve the functioning of their enforcement systems. Yet, many more reforms are still needed to arrive at a satisfactory level of practical compliance on the ground. Continuing administrative reforms of the court systems and the labour inspectorates, public information campaigns about employment rights or financial support for civil society organisations are among the strategies that our focus group discussions in the CEECs revealed as promising steps to improve the situation.

Against the background of our findings on both legal and practical implementation in the Czech Republic, Hungary, Slovakia and Slovenia, the concluding section will discuss the implications of these results for extending the worlds of compliance typology to the new member states.

4. How Many Worlds of Compliance in the EU27?

As outlined above, our study of the implementation of three EU Directives from the fields of working time regulation and equal treatment in four CEECs revealed considerable general obstacles to practical application of the law, with relatively similar patterns in all four countries studied. By contrast, their performance is much better at the transposition stage of the implementation cycle. In fact, it should be mentioned here that in terms of pure transposition of EU Directives into national law, it seems possible that the new member states might even perform systematically better than the old ones – though we would need a broader empirical basis to substantiate this claim on a general basis. When presenting the six-monthly Internal Market Scoreboard to the press in February 2006, Competition Commissioner McCreevy indeed said that the results from new member states were generally better, highlighting that the average transposition deficit for this group was 1.2 per cent but 1.9 per cent for the EU15 (Agence Europe 22 February 2006: 7).

The true hurdles for good compliance with EU standards are hence not a lack of political will or any transposition-impeding conditions within the political and/or administrative systems. Rather, the main obstacles are strained economies with elevated rates of unemployment and worker-unfriendly employment conditions; court systems lacking resources and knowledge concerning EU law; and finally also an inadequate organisation of labour inspectorates.

While we found a clear pattern of lacking application and enforcement of EU law in all four member states studied, there seems to be no systematic pattern of ‘revenge’. Transposition processes do continue, sometimes quite successfully, even after EU accession. Among our cases, there were three examples of continued transposition efforts after accession. This can be interpreted to suggest that we should definitely not speak about a ‘world of revenge’. The existence of such a world would, first of all, presuppose an element of decision to misbehave in order to take revenge for the high pressure exerted by the Commission in the pre-accession phase. We did not find any clear evidence to that effect. Furthermore, figures from the European Commission show that the transposition rates of our four new member states

have steadily increased, rather than decreased, since accession.¹² Secondly, a ‘world of revenge’ would imply that the enforcement and application problems are particularly severe with regard to European law. By contrast, our results suggest that the crucial hurdles for better street-level compliance with ‘foreign’ law are the very same ones that also hamper proper application of ‘home-made’ standards. This suggests that what exists in the four CEE countries studied is rather a pattern similar to what is typical for a few countries in the EU15, i.e. insufficient enforcement systems and, as a result, systematic failures at the application stage.

Overall, therefore, what we observe in the four countries is a combination of political contestation at the transposition stage, and quite systematic non-compliance at the enforcement and application stage. It should be mentioned that the pattern is certainly not in accordance with the style of literal translation of Directives in the CEECs (as discussed in the literature and mentioned in our introduction). By contrast, the pattern we found in our recent empirical work is quite similar to two¹³ of the countries in the ‘old’ EU15, Ireland and Italy. Both feature procedures characterised by domestic politics considerations when it comes to transposition and have clearly inappropriate enforcement systems.¹⁴

To capture this combination of politicised transposition and systematic shortcomings in enforcement and application, we suggest a fourth category: the ‘world of dead letters’. Countries belonging to this cluster of our typology may transpose EU Directives in a compliant manner, depending on the prevalent political constellation among domestic actors, but then there is non-compliance at the later stage of monitoring and enforcement. In this group of countries, what is written on the statute books simply does not become effective in practice. Shortcomings in the court systems, the labour inspections and finally also in civil society systems are among the detrimental factors accounting for this.

The typical process patterns of our extended typology of four worlds of compliance, and the countries belonging to each cluster, are summarised in Table 1.

12 See the tables on ‘Progress in notification of national measures implementing directives’ since mid-2004, available at http://ec.europa.eu/community_law/eulaw/index_en.htm. For example, the Czech Republic improved its transposition rate from 89.88 per cent in August 2004 to 99.63 per cent in August 2006. For Slovakia, the figures are 92.21 and 99.67, respectively. The other two countries show similar developments, although starting from a somewhat higher level. Note, however, that official transposition rates do not allow any insights on the completeness or correctness of the measures communicated to the Commission.

13 Note that in Greece and Portugal, whose typical procedural pattern during the transposition stage was neglect, we also found significant enforcement and application problems (Falkner, Treib, Hartlapp and Leiber, 2005, p. 275).

14 Therefore, we originally classified these two countries as belonging to what we then called the world of neglect if the focus is placed on the implementation process as a whole, and not only on transposition (Falkner, Treib, Hartlapp and Leiber, 2005, chapter 15). With our new cases at hand, however, and with a view to ensuring a systematic and comprehensible typology, it seems preferable to conceptualise an additional world of compliance to grasp the new combination of typical patterns in the different phases. Consequently, we now subsume Ireland and Italy, along with the Czech Republic, Hungary, Slovakia and Slovenia, under a separate world of compliance.

Table 1: Four Worlds of Compliance

	World of Law Observance	World of Domestic Politics	World of Dead Letters	World of Trans- position Neglect
Process pattern at stage of trans- position	+	o	o	–
Process pattern at stage of practical implementation	+	+	–	+/–
Countries	Denmark, Finland, Sweden (3)	Austria, Belgium Germany, Nether- lands, Spain, UK (6)	Ireland, Italy, Czech Republic, Hungary, Slovakia, Slovenia (6)	France, Greece, Luxembourg, Portugal (4)

+ = respect of rule of law; o = political pick-and-choose; – = neglect

Three issues deserve special highlighting: First, our typology refers to typical process patterns, not to implementation outcomes. It is thus not tantamount to groups of good, mediocre or bad performers. Therefore, the typology can fruitfully serve as a filter deciding which theoretical factors explain implementation processes in which country settings.¹⁵

Second, each world refers to a combination of typical process patterns in the two major phases of implementing EU Directives: transposition and application/enforcement. Sometimes, the same pattern applies to both phases (e.g. dutiful transposition and effective practical implementation in the world of law observance), and sometimes each phase shows a peculiar pattern (e.g. politicised transposition and major shortcomings in enforcement and application in the world of dead letters). This implies that many more worlds would be theoretically possible than those we specify. Our decision was to create useful labels for those constellations we actually found empirically rather than cataloguing potential forms.

Third, the titles of our worlds refer to the most significant characteristic of each cluster. This characteristic is not necessarily present in both stages of the implementation process. This was a compromise solution for the sake of offering ‘telling’ labels that are easy to capture and to memorise. At least at first glance, the label ‘world of dead letters’ is closer to the outcome than a process pattern. However, we understand it as saying: first, there is

¹⁵ If the typology were geared towards different implementation outcomes itself, this would be tautological.

transposition into rather good domestic laws, with domestic politics being crucial, but then these countries lack proper institutions and processes for turning these laws into action.

In overall terms, we should close with a word of caution. As outlined in the introduction, this paper discussed the findings of a research project on three Directives in four CEE countries. It goes without saying that more case and country studies would be useful in order to judge the overall compliance record, and the typical implementation patterns more generally, in Central and Eastern Europe. There are, in any case, signs that the pattern of relatively good transposition but flawed enforcement, which is typical for the world of dead letters, may also be found in further CEECs, such as Poland (Leiber, 2005). And the fact that many of the problems revealed in terms of control and enforcement arise from shortcomings in the bureaucracies and the court systems, or even from the weakness of civil society and interest groups, suggests that the pattern will most probably not be restricted to a few policy areas.

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